



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**STATE v. FRANK R. MALDONADO
CR-09-0179-PR
1 CA-CR 07-0837 (Opinion) 2009 WL 1298991**

PARTIES AND COUNSEL:

Petitioner: Maldonado is represented by Karen Noble, Maricopa County Deputy Public Defender.

Respondent: The State is represented by Michael O'Toole, Assistant Attorney General.

FACTS:

The State filed a direct complaint, charging Maldonado with knowingly possessing or using cocaine base of hydrolyzed (crack) cocaine, a narcotic drug, in violation of A.R.S. §13-3408. The superior court held a preliminary hearing at which Maldonado was present and represented by counsel. At the hearing, the State produced the testimony of an officer involved in Maldonado's arrest, and defense counsel conducted cross-examination. After considering the testimony, the court found probable cause to hold Maldonado to stand trial on the charge set forth in the complaint. He was arraigned and pled not guilty. In its minute entry for the preliminary hearing and arraignment, the court noted: "Filed: Information."

Trial began. After the jury was empanelled and sworn, the court instructed the clerk to "read the charges." The court's minute entry notes that the charge read was from the Information. The trial transcript also reflects that the court clerk read an Information to the jury. In pertinent part, the language read to the jury mirrored exactly the language of the complaint, except for the charging date. Maldonado raised no objection to the reading of the charge. The jury returned a guilty verdict for Possession or Use of Narcotic Drugs. The court found he had two or more prior felony convictions and sentenced him to an exceptionally mitigated six-year prison term.

Maldonado appealed. His counsel informed the court of appeals the Information was not in the record on appeal and could not be located in the superior court record. The court granted counsel's motion to supplement the record with the Information and extended the opening brief filing deadline. An Information was filed in superior court and the court of appeals and contains the exact language of the complaint and the charge read at trial, except that it recites a different charging date - the date the Information was finally filed in superior court. Opinion at ¶7.

The court of appeals noted that an Information is "a written statement charging the commission of a public offense, signed and presented to the court by the prosecutor." Ariz. R.Crim. P. 13.1(b). It must contain a "plain, concise statement of the facts sufficiently definite to inform the defendant of the offense charged," and must also "state for each count the official or customary

citation of the ... provision of law which the defendant is alleged to have violated." Ariz. R.Crim. P. 13.2(a)-(b). The motion must be filed in the superior court within ten days of a determination of probable cause or the defendant's waiver of a preliminary hearing. Rule 13.1(c), Ariz.R.Crim.P. If it is not timely filed, the case may be dismissed without prejudice upon the defendant's motion. *Id.* A defendant may waive his right to pursue a motion to dismiss. *State v. Sheppard*, 2 Ariz.App. 242, 244, 407 P.2d 783, 785 (1965). Given all those principles, and in light of Maldonado's failure to contend that he lacked notice of the charge against him or that he was deprived of an opportunity to prepare a defense, the court concluded that the timeliness of the Information is a procedural requirement, and an untimely Information does not itself defeat jurisdiction.

ISSUE:

"Does the trial court have jurisdiction to try, convict, and sentence Maldonado even though the State failed to file an information until the trial was concluded in direct violation of Article 2, §30 of the Arizona Constitution and Arizona Rules of Criminal Procedure, Rule 13.1?"

RELEVANT PROVISIONS OF LAW:

Article 2, Section 30 of the Arizona Constitution says:

"No person shall be prosecuted criminally in any court of record for felony or misdemeanor, otherwise than by information or indictment; no person shall be prosecuted for felony by information without having had a preliminary examination before a magistrate or having waived such preliminary examination."

Rule 13.1, Arizona Rules of Criminal Procedure ("Definitions; timeliness"), states:

- a. An indictment is a written statement charging the commission of a public offense, presented to the court by a grand jury, endorsed as a "true bill" and signed by the foreman.
- b. An information is a written statement charging the commission of a public offense, signed and presented to the court by the prosecutor.
- c. Timeliness. An information shall be filed in Superior Court within 10 days after the determination of probable cause or the defendant's waiver of a preliminary hearing. Failure to file a timely Information shall be grounds for dismissal of the prosecution on motion of the defendant under Rule 16.7(b). Such dismissal shall be without prejudice except that if the prosecution is refiled, the time limits under Rule 8.2 shall be computed from the initial appearance on the original complaint.

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| <p><i>This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.</i></p> |
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